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BOOK REVIEWS.

ESSAYS ON CONSTITUTIONAL LAW AND EQUITY. By Henry Schofield, late professor in Northwestern University, 2 Volumes. (Boston: The Chipman Law Publishing Company, 1921, pp. xxiv, 1006.)

With only two exceptions the essays published in these two volumes have already appeared, from time to time, in the *Illinois Law Review*. This is true also of the shorter discussions which the editors have designated "Collected Comment". But both the essays and the "Collected Comment" well deserve the wider circulation they are certain to secure through this collection.

They are noteworthy contributions to the two subjects to which they relate, presenting the rare combination of closely reasoned legal discussion with constructive theories at once forceful and practical. The law professor, in the discussion of his favorite theories, is usually theoretical; but Professor Schofield keeps his feet upon the solid ground of a thorough and accurate knowledge of the decisions and of their practical significance; and his theories as to the developments and changes which might reasonably be regarded as in the direction of sound juristic growth, never lose sight of the law as it now is.

Dean Wigmore, in his admirable "Foreword", characterizes the essays with precision and accuracy when he says: "The essays here collected are a rich revelation of a genius at once critical and constructive in the highest degree—critical to the minutest detail of a judicial expression and to the slightest element of doctrine—and constructive in its consistent and constant presentation of an entire constitutional scheme and standard for testing the validity of the current decisions."

The subjects discussed are primarily those of Constitutional Law, almost three-fourths of the volumes being devoted to these, and the remaining one-fourth to the essays relating to equitable doctrines. These latter include discussions of questions of "Specific Performance", "Equity Jurisdiction to Construe and Reform Wills", "Relief against Torts", "Relief against Proceedings at Law", "Subrogation and Exoneration" and "Administration of Assets"—discussions thorough and enlightening.

But Constitutional Law was evidently the subject that commanded Mr. Schofield's first interest. His very style, dignified, forceful and individual, discloses his evident preference for this branch of the law, for the discussion invariably proceeds with an exuberance and enthusiasm that gives the reader the immediate impression of the strong man rejoicing to run his race.

In the first of these essays dealing with the "Supreme Court of the United States and the Enforcement of State Law by State Courts," Mr. Schofield, recognizing the decisions against him, argues for an appellate jurisdiction in the Supreme Court to reverse State Courts when their decisions are wrong, contending that this is just as much a taking of property without due process of law as when the legislature of a State, by legislative act, unwarrantedly interferes with private property.

Thus he says:

"That is to say, the judgment of a State Court on the merits must be tested by the settled, applicable rules of law, and if, so tested, the judgment appears to be stone, and not bread, it must be vetoed by the Supreme Court of the United States in the exercise of its appellate jurisdiction over State Courts under the Fourteenth Amendment and under Section 709, R. S."

Of course, such a doctrine, however plausible or even correct, would make the United States Supreme Court a possible appellate tribunal in respect to every case, and it may well be doubted whether the Constitution was intended to effect the degree of centralization that would result from such doctrine. The rule of the Supreme Court that the decision must enforce an arbitrary rule before it can be regarded as in violation of the Fourteenth Amendment seems more in accord with the spirit and purpose of our Constitution.

But his theory of the functions of the federal courts leads naturally to a support of *Swift v. Tyson*, and indeed to an argument in favor of its extension, while on the other hand his analysis of the Leo Frank case discloses the clear lawyerlike point of view in his insistence that the State court's judgment should be interfered with only for error appearing on the record—not for the bias of the tribunal, but for its want of *scientia*, as Mr. Schofield puts it, quoting Bacon's Legal Maxims.

In these first chapters of the volumes the reviewer finds what to him seem the most constructive theories of these essays. But this is said, not by way of detraction from the others, but only by way of appraisal. The treatment of the Full Faith and Credit clause, and especially of the case of *Haddock v. Haddock*, is on a high level; and the contention that the necessary implication of *Haddock v. Haddock* is that only one State can deal constitutionally with the question of divorce between a man and his wife is as subtle as it is ingenious.

Another illustration of the recognition of the correct legal principle, as opposed to what is possibly preferable and what would invite an evasion of simple obedience to the constitutional mandate, is found in his support of the rule of the Slocum decision respecting New Trials and the Seventh Amendment, as well as his support of the dissenting opinion in the Weems case respecting Cruel and Unusual Punishments.

All of the essays stimulate the desire to discuss their theories, but reviews are not ordained for this purpose, and the reviewer must content himself with this brief reference to a few of the outstanding subjects.

Finally, in these days of costly book production and resulting economies which are reflected in poor paper and poor printing, it is not inappropriate to add that these two volumes are published in a form befitting the superior quality of their content.

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